

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Marshall DeWitt McGaha,)	
)	
Plaintiff,)	Civil Action No. 6:10-2789-RMG
)	
v.)	ORDER
)	
Dentist Stark,)	
)	
Defendant.)	
_____)	

In this *pro se* action, Plaintiff contends that his civil rights were violated and that he is entitled to relief pursuant to 42 U.S.C § 1983. Pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2)(d), DSC, the case was automatically referred to the United States Magistrate Judge for pretrial proceedings and a Report and Recommendation. On March 9, 2011, Defendant Stark¹ filed a motion for summary judgment. (Dkt. No. 41). On September 27, 2011, the Magistrate Judge issued a Report and Recommendation recommending that Defendant's motion for summary judgment be granted. (Dkt. No. 54). On October 11, 2011, Plaintiff filed objections to the Report and Recommendation and argued that he could create a genuine issue of material fact if only he could obtain certain discovery from Defendant which Defendant has wrongfully withheld. (Dkt. No. 62). As explained herein, the Court does not adopt the Report and Recommendation, and the Court remands this case back to the Magistrate Judge with instructions to give Plaintiff a reasonable period of time to pursue discovery.

¹ Plaintiff originally filed this suit against several defendants. (See Dkt. No. 1). However, all defendants except Defendant Starks have been dismissed from this action. (See Dkt. No. 45).

DISCUSSION

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate with instructions.” *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983).

Here, Plaintiff’s objections to the Report and Recommendation do not focus on the merits of Defendant’s motion for summary judgment. Instead, Plaintiff’s objections focus almost entirely on the argument that Plaintiff has been denied the right to certain discoverable materials which might help him establish a genuine issue of material fact for purposes of Defendant’s motion for summary judgment. (*See generally* Dkt. No. 62). Plaintiff argues that he has served certain discovery requests upon Defendant, but that Defendant has wrongfully withheld responsive, discoverable material. (*See id.* at 2). Further, Plaintiff argues that, if only Defendant would produce the materials responsive to Plaintiff’s discovery requests, Plaintiff could show that Defendant has made false statements to the Court. (*See id.* at 4-8).

Because the parties are not required to file discovery requests and responses with the Court, and because the Magistrate Judge did not have the opportunity to address Plaintiff’s new argument relating to discovery in his Report and Recommendation, the record is unclear as to what discovery requests, if any, Plaintiff has served on Defendants, when such discovery requests were served, and

what responses, if any, Defendant provided to such discovery requests. To the extent Plaintiff has been denied the opportunity to obtain relevant, discoverable materials from Defendant, Plaintiff should of course be given the opportunity to do so. Thus, pursuant to 28 U.S.C. § 636(b)(1), the Court recommitts this matter to the Magistrate Judge with instructions to address the discovery issues raised by Plaintiff. The Magistrate Judge should ensure that Plaintiff receives a reasonable opportunity to conduct discovery in this case prior to the Court ruling on Defendant's motion for summary judgment. Once any discovery issues have been addressed, the Magistrate Judge may issue a new Report and Recommendation to this Court as appropriate.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

October 21, 2011
Charleston, South Carolina